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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

JOSEPH D. SCHLEIMER,

Plaintiff and Appellant,

v.

DAVID K. WINTER et al.,

Defendants and Respondents.

B146584

(Los Angeles County
Super. Ct. No. BC212778)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard C. Hubbell, Judge. Reversed and remanded with directions.

Schleimer & Freundlich and Joseph D. Schleimer for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Plaintiff Joseph D. Schleimer challenges a prejudgment order denying his motions to recover the costs of proof after defendants David K. Winter and Wolf Schmidt failed to admit the validity of his attorney lien against a judgment as requested in his requests for admissions. He contends (1) there was no valid reason for the defendants' failure to admit the validity of his lien, so he is entitled to costs of proof under Code of Civil Procedure section 2033, subdivision (o) as a matter of law; and (2) the trial court abused its discretion by denying his motions based on his purported failure to adequately document the amount of fees incurred. We agree with both of Schleimer's contentions and reverse the judgment with directions.

FACTUAL AND PROCEDURAL BACKGROUND

1. Factual Background

Schleimer entered into a retainer agreement with Sherman Hemsley and Infinite Productions, Inc., in July 1995. Under the terms of the agreement, Schleimer agreed to represent the clients in ongoing litigation in the superior court and bankruptcy court, and the clients granted Schleimer a lien on any judgment or settlement. Schleimer obtained a \$2.8 million judgment in favor of his clients and against Schmidt in March 1996.

Hemsley and Infinite Productions, Inc., assigned the judgment to Winter in November 1996 in exchange for Winter's forbearance of collection on a debt and as security for the debt. Winter filed a notice of assignment in January 1997 with a proof of service showing service by mail on Schleimer. Schleimer later alleged in his verified complaint in this action that he did not receive a service copy and was unaware of the

assignment. Hemsley also executed a confession of judgment in favor of a Nevada corporation in May 1998 for the full amount of his debt to Winter.

Schleimer represented Hemsley and Infinite Productions, Inc., as respondents on appeal from their judgment against Schmidt. The Court of Appeal reduced the damages award to \$1,795,163.80 and otherwise affirmed the judgment in April 1998. Schleimer on behalf of his clients also obtained a bankruptcy court order in December 1998 declaring the judgment debt nondischargeable.

2. The Present Action

Schleimer sued Winter and Schmidt in June 1999 alleging that the Winter as assignee of the judgment and Schmidt as judgment debtor contested the validity of Schleimer's attorney lien and sought to settle the judgment debt without satisfying his lien. He requested declaratory and injunctive relief. His former law firm later intervened in the action seeking declaratory and injunctive relief to protect its own lien arising from the period before July 1995.

Schleimer propounded requests for admissions asking the defendants to admit that he held a valid attorney lien against the judgment, that the lien was "senior" to the assignment, and that the assignment was subject to the lien. The defendants responded in September and November 1999 with objections and denials, and failed to admit the requests.

Schleimer moved for summary judgment against both defendants in November 1999 arguing that there was no triable issue of fact as to the "seniority" of his lien. A declaration by Hemsley stated that he had signed the retainer agreement individually and

on behalf of Infinite Productions, Inc., and that he acknowledged the validity and amount of the attorney lien. The defendants opposed the motion arguing among other things that there were triable issues as to the validity of the retainer agreement and amount of the lien. They argued that there was a triable issue of fact as to whether a fee schedule was attached to the retainer agreement and argued that if there was no fee schedule the retainer agreement was invalid under Business and Professions Code section 6148, subdivision (a).

The court determined that there were triable issues as to the validity of the retainer agreement, the validity of the assignment, and “the issue of lien priority and/or superiority” and denied the summary judgment motion in December 1999.

3. Trial

Schleimer requested a jury trial, while Winter disputed the right to a jury trial. When trial commenced in July 2000 with the issue still unresolved, the court decided to hear the case without a jury.

Only three witnesses testified at trial, which lasted only one morning. The defendants presented no significant defense to challenge the validity of Schleimer’s attorney lien. When the court asked Winter during closing argument on what basis he contended his assignment was not subject to Schleimer’s attorney lien, Winter responded, “My assignment is subject to validly enforceable liens by attorney liens or anybody else who were there in time before I got it, I would take it subject to it.” Winter then briefly restated his prior argument made in opposition to summary judgment that a retainer

agreement without a fee schedule is invalid, although he cited no evidence that the fee schedule attached to the original retainer agreement was not authentic.

The court took the matter under submission and later issued a minute order stating that the attorney liens of Schleimer and his former law firm were “superior” to the assignment of the judgment to Winter.

4. Motion for Costs of Proof

Schleimer moved to recover his attorney fees and costs incurred to prove the truth of matters that the defendants had failed to admit as requested in his requests for admissions, including the validity and seniority of his attorney lien. He filed declarations by his attorney and detailed bills stating the amounts of fees and costs incurred, and requested either the total amount incurred after service of the requests for admissions on each defendant or the total amount incurred after each defendant responded to the requests, ranging from approximately \$38,000 to \$47,000. The defendants argued in opposition that they had good reason to deny the requests for admissions because the issues were “hotly contested and difficult to resolve” as evidenced in part by the denial of Schleimer’s summary judgment motion and that the amount requested was unreasonable and duplicative, among other arguments.

The court concluded that Schleimer had failed to prove the amount of fees incurred, that not all of the fees requested were incurred due to the defendants’ failure to admit the requests for admissions, that the fees were duplicative, that Schleimer was not entitled to fees incurred before the defendants served their responses to the requests for admissions or fees incurred for jury trial preparation, and that Schleimer “has not

provided a sufficient legal accounting and has requested fees which are not reasonable.” The court therefore denied the motions in September 2000 and entered judgment in October 2000. Schleimer appeals the judgment.

CONTENTIONS

Schleimer contends (1) there was no valid reason for the defendants’ failure to admit the validity of his lien, so he is entitled to costs of proof under Code of Civil Procedure section 2033, subdivision (o) as a matter of law; and (2) the trial court abused its discretion by denying his motions based on his purported failure to adequately document the amount of fees incurred.

DISCUSSION

1. Costs of Proof under Code of Civil Procedure section 2033, subdivision (o)

Requests for admissions provide a means to narrow the issues in dispute and expedite litigation. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864-865.) Their use is not limited to matters of no significant dispute, but extends to any “matter that is in controversy between the parties.” (Code Civ. Proc., § 2033, subd. (a).) Responses to requests for admissions must “be as complete and straightforward as the information reasonably available to the responding party permits.” (*Id.*, subd. (f).)

If the responding party fails to admit the truth of a matter as requested and the requesting party later proves the truth of the matter, the court must order the requesting party to pay the expenses incurred to prove the matter, including reasonable attorney fees, unless it finds that (1) an objection to the request was sustained or the requesting party

waived a response, (2) the requested admission was of no substantial importance, (3) the responding party had reasonable ground to believe that it would prevail on the matter, or (4) the responding party had some other good reason for failing to admit the matter. (Code Civ. Proc., § 2033, subd. (o).)

Winter and Schmidt presented no meaningful defense at trial, and in opposing Schleimer's posttrial motions for costs of proof they offered no legitimate reason for failing to admit in response to the requests for admissions that his attorney lien was valid and that the assigned judgment was subject to the lien. Their meager argument that the lien was invalid because there was no fee schedule attached to the retainer agreement was groundless. Apart from the absence of evidence that the fee schedule attached to the original retainer agreement was inauthentic, the lack of a fee schedule would not invalidate the attorney lien but would only render the retainer agreement voidable at the clients' election (Bus. & Prof. Code, § 6148, subds. (a)(1), (c)), and there was no reason to believe that Schleimer's clients had elected to void the retainer agreement. Moreover, the statute that the defendants relied on does not apply to corporations (*id.*, subd. (d)(4)) such as Infinite Productions, Inc., one of Schleimer's two clients and a judgment creditor.

The trial court apparently rejected the defendants' argument that they had good reason to deny the requests for admission under any of the four statutory exceptions, and so do we. The question remains whether the court properly denied the motions for costs of proof based on Schleimer's purported failure to adequately document the amount of fees reasonably incurred.

2. *Discretion to Determine the Amount of Attorney Fees*

A party moving for costs of proof under Code of Civil Procedure section 2033, subdivision (o) must provide evidence supporting the amount requested, as with any other discovery sanction. (Code Civ. Proc., § 2023, subd. (c); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2001) ¶ 8:1413.1, p. 8G-38.) The trial court must exercise its discretion to determine whether the amount of attorney fees requested is reasonable. (*Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 737.) If the trial court determines that the amount requested is unreasonable, it must determine and award a reasonable amount. (*Id.* at pp. 737-738.)

A trial court has broad discretion to determine the amount of a reasonable fee. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, 1096.) “ ‘The “experienced trial judge is the best judge of the value of professional services rendered in his court” ’ ” (*Id.* at p. 1095.) “ ‘The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.’ [Citation.]” (*Id.* at p. 1096.)

A court’s determination that the amount requested is unreasonable alone does not justify the denial of an award of costs of proof under Code of Civil Procedure section 2033, subdivision (o) if the moving party has presented sufficient information for the

court to determine a reasonable amount. There is no authority for the denial of a mandatory award in those circumstances.

We conclude that the evidence presented in support of Schleimer's motions was sufficient for the court to determine the reasonable amount of expenses incurred due to the defendants' failure to admit the matters requested. The detailed attorney bills indicate the amount of time actually expended on specified tasks and the dates of that work. Based on that information, the trial court's observation of the litigation, and its knowledge and experience concerning the value of legal services, there was ample information for the trial court to determine the reasonable amount of fees incurred due to the defendants' failure to admit the matters requested. The court abused its discretion by refusing to do so.

DISPOSITION

The judgment is reversed with directions to the superior court to vacate the order denying the motions for costs of proof, exercise its discretion to determine the reasonable amount of fees and other expenses incurred by Schleimer in making the proof as to each defendant, and enter a new order granting the motions and awarding those amounts. Schleimer shall recover his costs on appeal.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.